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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/172,853 10/15/98 DUPUIS

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EXAMINER

HM12/0906

FINNEGAN HENDERSON FARABOW  
GARRETT & DUNNER  
1300 I STREET NW  
WASHINGTON DC 20005-3315

WEBMAN, E

ART UNIT

PAPER NUMBER

1617

DATE MAILED:

09/06/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/172853

Applicant(s)

DuPuis

Examiner

WEBMAN

Group Art Unit

1617

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 7/31/01.
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 25-67 is/are pending in the application.
- Of the above claim(s) 25-42, 63 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 43-62, 64-67 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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Prosecution is reopened to address additional issues<sup>S</sup> arising under 35 USC 112:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 43-62, 64-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over EPA 590604 (EP '604) in view of Sramek and Chem. Abstract 117546 ('546).

Applicants stipulate that EP '604 teaches the claimed "acrylates" copolymer (page 7 first two paragraphs), '604 teaches freeze-thaw stability in hair sprays (abstract). 2-20% water is specified (page 5 lines 20-27). The copolymer provides excellent performance<sup>C</sup> characteristics, including feel and shine (page 2 lines 35-37).

Sramek teaches an aerosol composition containing hair setting resins (abstract). Hair setting resins which are acrylic polymers containing such monomers as methacrylic acid, hydroxymonoesters of methacrylic acid with C2 glycol, methyl methacrylate, and butyl acrylate are specified (column 5 lines 59-65). Sramek also teaches alcohol and water (col. 5 lines 54-65). Generally less than 10% water is disclosed (column 5 line 68-column 6 line 1). Water soluble cosmetically acceptable basic compounds, including AMP (column 9 lines 22-34), perfumes, protein hydrolysates, preservatives, and silicones (column 9, lines 47-56), the last disclosed by applicant as a conditioning agent on page 30 second paragraph, are specified.

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'546 teaches a hair setting polymer comprising C2-8 alkyl acrylates, meth<sup>l</sup>ymethacrylate, hydroxyethyl-methacrylate and methacrylic acid. High effectiveness and water resistance are disclosed.

It would have been obvious to one of ordinary skill to add the polymer of '604 to the composition of Sramek to impart freeze-thaw resistance and to use the polymer of '546 as a hair setting polymer in view of its high effectiveness and water resistance. As to the claimed 41% aqueous dispersion of the hydroxyacrylate, applicants disclose such is an item of commerce (example 6, page 39).

Claims 43-62, 64-67 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Nowhere in the specification as originally filed, do applicants disclose "A polymer chosen from acrylates/hydroxyesters acrylates copolymers".

Claims 43-62, 64-67 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. ~~N~~owhere in the specification do applicants disclose polymers which are copolymers of acrylate monomer and monomers which are hydro<sup>y</sup>x<sup>l</sup>esters of acrylic acid.

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Claims 43-62, 64-67 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

"Polymer chosen from acrylates/ Hydroxyesters acrylates copolymers" is indefinite. First, it is unclear as to whether a Markush group is intended with the language "chosen from". The intent of the slash is unclear. Do applicants intend a copolymer comprising acryllate monomers and monomers which are hydroxyesters of acrylic acid? The phrase "hydroxyesters acrylates" Is meaningless. Is "of" intended between the two nouns?

No claims allowed.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward J. Webman whose telephone number is (703) -308-4432. The examiner can normally be reached on Monday through Friday from 9 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, M. Moezie, can be reached on (703) -308-0570. The fax phone number for the organization where this application or proceeding is assigned is (703) -305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) -308-1235.

Webman/LR

August 10, 2001

  
EDWARD J. WEBMAN  
PRIMARY EXAMINER  
GROUP 1500